



MESSAGE FROM THE PRESIDENT

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“I’LL BE YOUR HUCKLEBERRY”

Welcome to the May edition of *Nevada Lawyer*! This month’s offering of articles and scholarly musings addresses the subject of sexual harassment. It is not a “how to” manual, but rather a collection of pieces that insightfully examine issues surrounding the identification, investigation, evaluation and resolution of such claims. I begin by commending the contributors and authors for their intellectual courage and maturity, tackling a subject that, at least in the media and non-legal arena, has been the subject of much inaccuracy, vitriol, misunderstanding and exploitation. Thanks to all of them for endeavoring to address this important field of employment law with rationality and thoughtfulness.

While people on both ends of the conventional political spectrum demand an honest and open dialogue on sexual harassment, we all know by virtue of our experience and training that any productive dialogue may need to await an end to the current societal uproar on the subject. When a legal issue becomes politicized, “open and honest discussion” begins to sound more than a bit like an impossible dream.

Nonetheless, that day will come, and it will fall to lawyers to sort out the specifics of addressing the problems in the context of due process. Stay tuned!

And so, uncharacteristically for me, and at the risk of provoking false charges of “toxic masculinity,” I drift off the topic to the ultimate source of inspiration and ethical template for the modern trial lawyer: westerns. And not just any western, but the ultimate 20th century western movie – “Tombstone.” (Yes, I am familiar with the mid-1990s movie lover’s debate about whether Kevin Costner portrayed a better version of Wyatt Earp than Kurt Russell. But, as you’ll see, that debate detracts “not-at-all” [legal term] from my analysis.) And not just “Tombstone,” but Val Kilmer’s astonishing performance as the talented, scholarly, slightly dissipated and intensely lethal gunfighter, Doc Holliday. It should be required viewing in all law schools. (Put it in your curriculum, Dean Hamilton, and the William S. Boyd School of Law will see those *U.S. News & World Report* numbers climb even higher.) There is much to be learned from “Tombstone.”

Alas, not everyone will take my advice, as westerns are sometimes a hard sell. My wife dislikes westerns intensely. Having grown up in Nevada, she finds almost all of them “hokey.” And she especially dislikes “Tombstone,” since it is (arguably) violent; filled with gambling, drugs and booze; has an actor from “Beverly Hills 90210;” and has been on *every* night since Halloween 2016 somewhere on the cable channels. (But so has “You’ve Got Mail,” a movie far more negative, where an amoral corporate predator who resembles Tom Hanks drives a children’s bookstore out of business ... must be a huge market for this kind of stuff.) Anyway, I digress.

“Tombstone” is an uncanny paradigm for our modern legal environment, and an aspiring young litigator could have far worse role models than Doc Holliday as portrayed by Val Kilmer.

A healthy dose of “Tombstone’s” rules are desperately needed, as busy judges and Alternative Dispute Resolution outfits are steering us toward the overhyped and thoroughly numbing buffet of conflict-resolution offerings, having concluded that risky and exciting trials will be slowly driven to extinction by a regimen of meeting and conferring — and hours nibbling stale pizza in a conference room while the mediator meets for hours with opposing counsel. Before we can surrender to this fate, we need to remind ourselves why we became trial warriors in the first place. (And this is advice for everyone by the way — the warrior ethos knows no gender boundaries.... If you doubt me, have a

week-long trial against Kathy England sometime!)

And so, on to “Tombstone’s” rules for preserving and defending the adversarial process. Rule 1 concerns self-awareness. In a riveting encounter between Doc Holliday and the notorious gunslinger Johnny Ringo at a gambling establishment, Doc informs his Hungarian paramour, “Why look, darling! It’s the famous gunfighter Johnny Ringo. Should I hate him?” To which she replies, “You don’t even know him?” Unconvinced, Doc declares, “No. I think I do hate him. Something about him, around the eyes: he reminds me of ...me!” Rule 1: what we fear and respect in our adversaries is often what we have in common.

Rule 2 grows out of the same encounter. Johnny Ringo and Doc engage in a threatening exchange spoken entirely in Latin. As Doc informs his companion, “That’s Latin, darling. Evidently Johnny Ringo is an educated man. Now I *really* hate him!” Rule 2 reminds us that there is *always* a talented rival out there when we think we are at the top of our game. Proceed with caution and never let up.

While Johnny Ringo and Doc do not shoot it out that evening, a few days later, a drunken and angry Ringo confronts the Earp brothers with homicide in mind, but is interrupted by Doc, fresh from the barber’s chair, who offers, “I’ll be your Huckleberry!” (If you aren’t from Georgia and you went to school north of the Mason-Dixon Line, you may not recognize the phrase, which loosely translates as “I am just the person for that task.”) “Tombstone’s” Rule 3: *always* be willing to be someone’s Huckleberry, especially when your friends or the disadvantaged are threatened. If you aren’t willing to fight, your adversaries will always have the advantage.

Johnny Ringo and Doc eventually have their reckoning, when a dying Doc substitutes for Wyatt Earp in a gunfight with the deadly Ringo. Ringo attempts to evade the gunfight by explaining to Doc that “my fight is not with you.” “Tombstone” Rule 4 comes into play. Doc responds, “Oh I beg to differ. You and I began a game we have not completed.” When Ringo demurs that he was only fooling, Doc responds,

“I wasn’t. Just say when.” Rule 4 encourages us to see it through; if you are going to be the Huckleberry, be one. Otherwise you are all talk. (In your homework you will find related Rule 6, “you’re next, music lover!” No room to discuss that one now.)

And finally, Rule 5 is illustrated by Doc’s remark as he discards the U.S. Marshal’s badge he wore while dispatching Johnny Ringo. “My hypocrisy goes only so far, Wyatt.” Translated to the adversarial context, it advises us to follow and respect the Rule of Law; unless doing so would be flat-out wrong. You are a warrior, not a drone. True change is warrior’s work.

Following “Tombstone’s” Rules may not make you famous. The greatest lawyers sometimes go unrecognized by the general public. Most people think Don Campbell is the country western singer who recorded the song *Wichita Lineman* in the late 1960s. After all, how good a lawyer can you be if you aren’t constantly on TV, even if you are in handcuffs! But that is a new subject. Call it Stevie Wonder’s Rule 1: “Heaven Help Us All.”

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